

**MASSAGE THERAPY PRACTICE ACT**  
**PROPOSED CHANGES – DRAFT 2**  
**As of 9/8/15**

36-35-1. Definitions. Terms in this chapter mean:

(1) "Board," the Board of Massage Therapy;

(2) "Massage," the systematic mobilization of the soft tissues of the body through the application of hands or devices for the purposes of therapy, relaxation, or education through means which include:

(a) Pressure, friction, stroking, rocking, kneading, percussion, compression, vibration, or stretching;

(b) External application of water, heat, cold, lubricants, or other topical agents; or

(c) The use of manual methods or electronic devices or tools that mimic or enhance the actions of human ~~done by~~ hands;

(3) "Practice of massage therapy," the performance of massage for a fee or other compensation or holding oneself out to the public as performing massage;

(4) "Licensee," a person who, pursuant to this chapter, meets the qualifications for licensure and holds a valid license to practice massage therapy.

**Source:** SL 2005, ch 206, § 1.

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36-35-2. Appointment of board members--Terms--Vacancy. The board consists of five members appointed by the Governor. ~~The terms of the initial members of the board shall be staggered by the drawing of lots with three of the initial members serving a term of three years, two of the initial members serving a term of two years, and one of the initial members serving a term of one year. Any subsequent term on the~~ of a board member is three years. One member of the board shall be a person not licensed by the board. Four members of the board shall be persons licensed by the board. The Governor shall fill any vacancy by appointment to complete the unexpired portion of a ~~vacancy that member's term~~. No person may serve more than three consecutive full terms on the board. The appointment to an unexpired term is

not considered a full term.

The terms of members begin on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment.

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire.~~

**Source:** SL 2005, ch 206, § 2; SL 2012, ch 16, § 14; SL 2013, ch 176, § 8.

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36-35-3. Resignation of board members--Effective date. Any member of the board may resign by giving written notice to the board and to the Governor. Resignations are effective when delivered to the Governor and the board.

**Source:** SL 2005, ch 206, § 3.

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36-35-4. Selection of officers--Executive secretary. The board shall ~~select~~ elect annually from its members a president, vice-president, and secretary. ~~at its annual meeting. No member may serve as president for more than three consecutive one year terms. The board may hire an executive secretary to perform any managerial, clerical, or other duties directed by the board.~~

**Source:** SL 2005, ch 206, § 4.

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36-35-5. Meetings of board. The board shall hold at least two meetings annually ~~an annual meeting~~ at a place and time set by the board. The board may hold special other meetings at a time and place set by the president or a majority of the board. ~~by giving written notice to the board prior to the meeting.~~

**Source:** SL 2005, ch 206, § 5.

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36-35-6. Quorum--Majority vote. Three board members present at any meeting constitute a quorum. No board action may occur unless approved by a majority vote of the entire board.

**Source:** SL 2005, ch 206, § 6.

36-35-7. Compensation of board members. Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while actually engaged in official duties.

**Source:** SL 2005, ch 206, § 7.

36-35-8. Display of license. Any person engaged in the practice of massage in this state shall conspicuously display a valid license from the board in the person's place of business.

**Source:** SL 2005, ch 206, § 8; SL 2013, ch 184, § 1.

36-35-9. Use of fees. Any fees collected under this chapter shall be used for the operation of the board and the implementation of this chapter.

**Source:** SL 2005, ch 206, § 9; SL 2013, ch 184, § 2.

36-35-10. Practice of massage without license as misdemeanor--Injunction. ~~Any person~~ No one may who engages in the practice of massage or holds ~~himself or herself~~ oneself out to the public as engaged in the practice of massage without a license ~~issued~~ pursuant to this chapter. ~~is guilty of a Class 1 misdemeanor.~~ The board may ~~file~~ bring a civil action to enjoin any violation of this chapter. person engaging in the practice of massage without a license.

It is a Class 1 misdemeanor for anyone to:

(1) Practice massage therapy without a license;

(2) Own, operate or manage a business which employs, contracts with or allows any unlicensed person to offer or provide massage therapy; or

(3) Represent, hold out, offer or advertise massage unless licensed pursuant to this chapter.

The board may, in addition to an injunction, issue a cease and desist order for a violation of this chapter following a hearing conducted pursuant to chapter 1-26. Each day of continued violation after a cease and desist order is issued constitutes a separate Class 1 misdemeanor.

**Source:** SL 2005, ch 206, § 10; SL 2013, ch 184, § 3.

36-35-11. Repealed by SL 2013, ch 184, § 4.

36-35-12. Application for license--Qualifications--Appeal of denial. The board shall issue a license to engage in the practice of massage to any person who submits an application form and the nonrefundable application fee as approved in § 36-35-17 and who demonstrates the following qualifications:

- (1) Eighteen years of age or older;
  - (2) Completion of no less than five hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board;
  - (3) Absence of unprofessional conduct;
  - (4) Professional liability insurance coverage pursuant to § 36-35-21;
- and
- (5) Passing score on a nationally recognized competency examination approved by the board in rules promulgated pursuant to chapter 1-26.

The board may refuse to grant a license to any person based on failure to demonstrate the requirements of this section. The board may grant a license, subdivision 36-35-13(1) notwithstanding, if the applicant has been convicted of, or pled guilty to a felony, any crime involving or relating to the practice of massage, or any crime involving dishonesty or moral turpitude and the board determines that the plea or conviction is of a nature or is sufficiently remote in time that the applicant does not constitute a risk to public safety. An applicant may appeal the denial of a license in compliance with chapter 1-26.

**Source:** SL 2005, ch 206, § 12; SL 2007, ch 223, § 1; SL 2013, ch 184, § 5; SL 2015, ch 201, § 1.

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36-35-12.1. Temporary permit. Upon application and payment of an application fee not to exceed seventy-five dollars, the board may issue a temporary permit to practice massage therapy as a licensed massage therapist to an applicant who has met the requirements of subdivision 36-35-12(1) to (4), inclusive, pending completion and results of the examination required pursuant to subdivision 36-35-12(5), if the applicant intends to practice massage therapy in the state during the time the permit is valid. A temporary permit license may be issued no more than twice and is effective for a term of not more than ninety one hundred eighty days. A temporary permit license automatically expires on the occurrence of the following:

- (1) Issuance of a regular license;
- (2) Failure to pass the licensing examination; or
- (3) Expiration of the term for which the temporary license was issued.

**Source:** SL 2013, ch 184, § 6; SL 2015, ch 201, § 2.

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~~36-35-12.2. Expiration date of existing licenses. The board shall automatically issue a license with an expiration date of September 30, 2014, to any massage therapist licensed in South Dakota before July 1, 2013.~~

**Source:** SL 2013, ch 184, § 7.

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36-35-12.3. Expiration of license. ~~Unless automatically issued pursuant to this section, a~~ license issued under this chapter is valid until September thirtieth following the date it is issued and automatically expires unless it is renewed.

**Source:** SL 2013, ch 184, § 8.

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36-35-13. Unprofessional conduct. For the purposes of this chapter, any of the following acts constitute unprofessional conduct:

- (1) Conviction of or a plea of guilty to any felony, any crime involving or relating to the practice of massage, or any crime involving dishonesty or moral turpitude;
- (2) Providing the board false or misleading information on any application for a license or renewal of a license;
- (3) Willful misconduct or negligence in the practice of massage;
- (4) Exceeding the scope of practice of massage as defined in § 36-35-1;
- (5) Engaging in any lewd or immoral conduct;
- (6) Making fraudulent charges for services;
- (7) Engaging in conduct which endangers the health or welfare of clients or other persons; ~~or~~

(8) Failure to comply with any provision of this chapter; or;

(9) Engaging in any act that aids, abets, facilitates or promotes a violation of this chapter.

**Source:** SL 2005, ch 206, § 13; SL 2013, ch 184, § 9; SL 2015, ch 201, § 3.

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~~36-35-14. Temporary authority to issue license upon completion of alternative education or experience requirements. Until July 1, 2008, the board may issue a license to a person who demonstrates completion of a minimum of one hundred hours of training or study in the practice of massage with a facility or instructor recognized by the board or adequate experience derived from the active practice of massage for at least the three years immediately preceding the date of the application. Any person applying for a license under this section is not required to comply with the examination and training or study requirements of § 36-35-12 but shall meet the other criteria set forth in § 36-35-12. Any person applying for a license under this section shall submit an application as required by § 36-35-12 along with proof of active practice for at least three years prior to the date of application. Any person who qualified for licensure pursuant to this section and allowed the license to lapse may be issued a license, notwithstanding the initial time period provided in this section, by complying with this section before June 30, 2012.~~

**Source:** SL 2005, ch 206, § 14; SL 2007, ch 223, § 2; SL 2011, ch 187, § 1.

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~~36-35-15. Applicants licensed or registered in other states. Any person holding a valid license or registration to practice massage from another state whose requirements for licensure or registration are not less restrictive than this state is exempted from the requirement for any examination for licensure by § 36-35-12. Any person applying for a license under this section shall submit an application as required by § 36-35-12 along with proof of a current license.~~

The board may issue a license to an applicant licensed to practice massage therapy in another state, SDCL 36-35-12 notwithstanding, if the applicant demonstrates the following qualifications:

- (1) Eighteen years of age or older;
- (2) Absence of unprofessional conduct;
- (3) Professional liability insurance pursuant to SDCL 36-35-21;
- (4) Verification form the authority that issued the applicant's license indicating the applicant is in good standing and currently licensed to practice; and

1 (5) Experience and competency in massage indicated by education that  
2 substantially complies with SDCL 36-35-12(2) or verification of an active  
3 massage therapy in the state of licensure in the two years immediately  
4 preceding the date of application for licensure. An active massage  
5 therapy practice is at least 200 hours of patient contact in the  
6 preceding two year period.

7 **Source:** SL 2005, ch 206, § 15; SL 2013, ch 184, § 10.

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9 36-35-16. Renewal of license. Any ~~licensee~~~~person~~ holding a valid license  
10 under this chapter may renew that license by making application for renewal,  
11 paying the required renewal fee, and providing proof of compliance with the  
12 continuing education requirements set by the board. If the board has not  
13 received a license renewal application by the expiration date, the board shall  
14 notify the licensee within five days that the renewal application has not been  
15 received and that the licensee may not practice until the license is renewed.  
16 Any person who submits a license renewal application and provides proof of  
17 compliance with the continuing education requirements set by the board within  
18 thirty days after the expiration date ~~shall~~ may be granted a license renewal.

19 **Source:** SL 2005, ch 206, § 16; SL 2011, ch 187, § 2; SL 2013, ch 184, § 11.

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21 36-35-17. Application and license fees. Any applicant for a license under this  
22 chapter shall submit a nonrefundable application fee not to exceed one  
23 hundred dollars. Any person who has a license issued or renewed by the board  
24 shall submit a license fee in an amount not to exceed sixty-five dollars. Fees shall  
25 be set by the board by rule promulgated pursuant to chapter 1-26.

26 **Source:** SL 2005, ch 206, § 17; SL 2007, ch 223, § 3; SL 2008, ch 191, § 76.

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28 36-35-18. Duplicate license. The board may issue a duplicate license to a  
29 licensee upon request.

30 **Source:** SL 2005, ch 206, § 18; SL 2008, ch 191, § 77; SL 2013, ch 184, § 12.

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32 36-35-18.1. Inactive license--Fee. The board may inactivate a valid license  
33 upon submission of an application and ~~issue an inactive massage therapist~~  
34 ~~license upon~~ payment of the application fee.

35 **Source:** SL 2007, ch 223, § 5.



36-35-19. Continuing education requirements. Any person licensed under this chapter shall complete eight hours of continuing education relating to competence in the practice of massage on a biennial basis of a type and from a facility or instructor approved by the board. The required continuing education hours may be obtained by electronic means. The board may waive the continuing education requirement upon proof of illness or hardship.

**Source:** SL 2005, ch 206, § 19; SL 2007, ch 223, § 4; SL 2013, ch 184, § 13.

36-35-20. Investigation of complaints--Inspections. The board ~~shall~~ may ~~initiate,~~ receive and ~~may~~ investigate ~~any~~ complaint filed with the board alleging ~~a violation of this that any licensed massage therapist has violated the requirements of this~~ chapter. The board may inspect ~~the~~ any place of business of any person licensed pursuant to this chapter, or where the unlicensed practice of massage is alleged. ~~with a license issued pursuant to this chapter named in a complaint pursuant to this section during normal business hours or upon written notice.~~

**Source:** SL 2005, ch 206, § 20; SL 2013, ch 184, § 14.

36-35-21. Professional liability insurance coverage. Any person holding a valid license under this chapter and engaged in the practice of massage therapy shall carry malpractice or professional liability insurance coverage with a company with a certificate of authority from the South Dakota Division of Insurance with limits of no less than two hundred fifty thousand dollars per occurrence. A licensee shall notify the board of any change of carrier occurring after a license or renewal is granted.

**Source:** SL 2005, ch 206, § 21; SL 2013, ch 184, § 15.

36-35-22. Grounds for cancellation, suspension, or revocation of license--Hearing--Appeal. The board may cancel, suspend, or revoke a license following a contested case hearing in compliance with chapter 1-26 upon satisfactory proof of incompetence, unprofessional conduct, or a violation of any provision of this chapter. The board may waive the requirement of prior notice and an informal meeting set forth in § 1-26-29 if the licensee presents an immediate threat to the public or has engaged in willful misconduct. Any licensee person may appeal the cancellation, suspension, or revocation of a license in compliance with chapter 1-26.



**Source:** SL 2005, ch 206, § 22.

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36-35-23. Reapplication for cancelled, suspended, or revoked license. Any person whose license has been cancelled, suspended, or revoked by the board may not reapply for a license until one year after it was cancelled, suspended, or revoked unless a different time has been set by the board.

**Source:** SL 2005, ch 206, § 23.

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36-35-24. Promulgation of rules. The board may promulgate rules pursuant to chapter 1-26 ~~to establish in the following areas:~~

- (1) The form and information required for any license application;
- (2) A list of recognized facilities or instructors who may provide training or instruction required for licensure or continuing education requirements;
- (3) The amount of license fees;
- (4) ~~The procedures for conducting disciplinary proceedings;~~
- (5) ~~The procedures for conducting complaint investigations;~~
- (6) The procedures for applying for an inactive license and the procedures to regain active licensure; ~~and~~
- ~~—(7) Approval of national competency examinations; and~~
- ~~(6) A code of ethics for licensees.~~

**Source:** SL 2005, ch 206, § 24; SL 2007, ch 223, § 6; SL 2013, ch 184, § 16.

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36-35-25. Application of chapter. The provisions of this chapter do not apply to any person performing massage for compensation if the massage is done under one of the following circumstances:

- (1) As part of a licensed practice as a physician, physician assistant, chiropractor, nurse, physical therapist, athletic trainer, or other health care profession licensed or certified under Title 36;
- (2) As part of a licensed practice pursuant to chapter 36-14 or 36-15, if the licensee is performing within the scope of the licensed practice and the

licensee does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy;

(3) In furtherance of duties as an employee of the United States the official discharge of duties as a massage therapist in any branch of the armed services of the United States, the United States Public Health Service, or the United States Veterans Administration;

(4) As part of a course of study with a facility or instructor recognized and approved by the board to provide training in massage or the provision of such instruction;

(5) As part of providing a course of instruction or continuing education by a licensed massage therapist or provider preapproved by the board, in the practice of massage therapy on a temporary basis not in excess of ten days; or

(6) Manipulation of the soft tissues of the human body is restricted to the hands, feet, or ears and the person does not hold himself or herself out to be a massage therapist or to be engaged in the practice of massage therapy.

**Source:** SL 2005, ch 206, § 25.

#### New Section:

#### The board may:

- (1) Administer, coordinate, and enforce the provisions of this chapter;
- (2) Evaluate the qualifications of applicants for licensure and permits and issue and renew licenses and permits;
- (3) Maintain the names of persons that meet the qualifications for licensure;
- (4) Conduct all disciplinary proceedings under this chapter;
- (5) Maintain a record of each complaint received by the board;
- (6) Establish standards for the safe and qualified practice of massage therapy;
- (7) Report licensing actions and status to relevant state and federal governing bodies as may be required, or as the board may determine is appropriate;
- (8) Employ or contract with personnel and enter into contracts in a manner specified by law to carry out the board's responsibilities; and
- (9) Pursue legal actions against persons or entities in violation of this chapter;

1        New Section:

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3        The board, its members and its agents are immune from personal liability

4        for actions taken in good faith in the discharge of the board's duties. The

5        state shall hold the board, its members and its agents harmless from all

6        costs, damages, and attorney fees arising from claims and suits against

7        them in respect to all matters to which this immunity applies.